

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DION LAVELL NEAL-EL,

Petitioner,

Case Number: 05-73300

v.

HON. MARIANNE O. BATTANI

RAYMOND D. BOOKER,

Respondent.

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**OPINION AND ORDER TRANSFERRING SUCCESSIVE PETITION FOR  
WRIT OF HABEAS CORPUS TO UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Petitioner Dion Lavell Neal-El, a state inmate currently incarcerated at the Ryan Correctional Facility in Detroit, Michigan, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, this Court determines that this is a successive habeas corpus petition and as such orders it transferred to the Sixth Circuit Court of Appeals, pursuant to 28 U.S.C. § 1631<sup>1</sup> and 28 U.S.C. § 2244(b)(3)(A).

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<sup>1</sup> 28 U.S.C. § 1631 provides, in relevant part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed . . .

In the pending petition, Petitioner challenges his 1988 convictions in Wayne County Circuit Court for first-degree murder and possession of between 50 and 225 grams of cocaine. The Court determines that the petition must be transferred to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 2244(b)(3)(A), because it is a successive habeas corpus petition.

Section 2244(b)(3)(A) provides, in pertinent part:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3)(A).

Petitioner previously has filed a habeas corpus petition challenging the convictions challenged in the pending petition. On April 18, 2001, Petitioner filed a habeas corpus petition in the United States District Court for the Eastern District of Michigan. On August 19, 2002, the District Court denied the petition on the merits. *See Neal-El v. Smith*, No. 01-CV-71414 (E.D. Mich. Aug. 19, 2002) (Cleland, J.).

Petitioner has not obtained from the Court of Appeals for the Sixth Circuit authorization to file a second or successive petition in this Court. The Sixth Circuit has held that “when a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.” *In re Sims*, 111 F.3d 45, 47 (6<sup>th</sup> Cir. 1997).

Accordingly, **IT IS ORDERED** that the petition for a writ of habeas corpus be **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit.

s/Marianne O. Battani  
MARIANNE O. BATTANI  
UNITED STATES DISTRICT JUDGE

DATE: September 7, 2005